IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 163 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KASHIBEN WD/O.DAHYABHAI KHUSHALBHAI & 3 - Petitioner(s)

Versus

DY SECRETARY & 2 - Respondent(s)

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Appearance :

MR RM CHHAYA for Petitioner(s) : 1 - 4.
MR SIRAJ GORI AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/12/2005

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 11th October, 1995 passed by the Dy. Secretary (Appeals), Revenue Department, Govt. of

Gujarat. In the impugned order the Dy. Secretary was pleased to review the order dated 31/1/1994 issued by Collector Kheda by which the petitioner was granted the non agricultural use permission u/s 65 of the Bombay Land Revenue Code. The order was passed in purported exercise of powers u/s 211 of Bombay Land Revenue Code.

2. In the impugned order the Dy. Secretary had confirmed two grounds which were indicated to the petitioner in the show cause notice issued to him. Firstly, it was noted that the order passed by the Mamlatdar and ALT removing the restriction contained in Section 43 of the Bombay Tenancy and Agricultural Lands Act is a nullity since such an order was never taken in review. Collector, therefore, could not have relied on such an order for granting NA permission. Secondly, it is held against the petitioner that a revision application has been filed against the orders passed by the Mamlatdar on 6/12/1993 removing the restriction contained in Section 43 of the Bombay Tenancy and Agricultural Lands Act and such a revision application is still pending.

2.1 In the order passed by the Dy. Secretary, it was

observed that the Agricultural Lands Tribunal did not have power to review the earlier order and, therefore, his order is a nullity.

3. Learned advocate Shri Chhaya appearing for the petitioner submitted that the Dy. Secretary has committed a gross error in taking orders passed by the Collector in revision. He submitted that fore-father of the petitioner were tenants of the land in question and were cultivating the lands as tenants since 1931. He further submitted that the tenancy of the predecessors of the petitioner continued all through out and the petitioner would, therefore, be permanent tenant. He, therefore, contended that restriction contained in Section 43 Bombay Tenancy and Agricultural Lands Act would, therefore, not apply. In support of his contention, learned advocate Shri Chhaya for the petitioner placed reliance on the averments made in the petition and in particular those brought on record through an amendment as well as village records, copies of some of which are produced on record. On the basis of these records and the averments, it is the case of the petitioner that the Dy. Secretary ought to have appreciated that the petitioner was a permanent tenant and that, therefore,

the restriction contained in Section 43 Bombay Tenancy and Agricultural Lands Act were not applicable. Learned advocate Shri Chhaya also placed reliance on a Government circular dated 18/3/1996 in which, modalities for treating a claimant tenant as a permanent tenant had been laid down. He submitted that the said circular provides that if a person has been a tenant since 1/1/1936 and prior to 1/8/1956 has been a tenant at least for a period of 15 years, he would be treated as a permanent tenant. He submitted that since 1931 the predecessors of the petitioner have been occupying the land in question as tenants without any interruption.

4. Learned AGP Shri Gori sought to support the orders passed by the Dy. Secretary. He however, agreed that in the impugned order the Dy. Secretary has not discussed the status of the petitioner with relevance to the record emerging from the revenue records.

5. Considering the above submissions and the situation arising on record, I find that the Dy. Secretary ought to have examined the revenue records to find out whether the petitioner fulfills the conditions for being treated as a permanent tenant. If there was sufficient material on

record to establish that the tenancy rights of the petitioner can be traced to the year 1931 through his ancestors, he had a good case for urging before the Dy. Secretary that he should be treated as a permanent tenant and that restriction contained in Section 43 of Bombay Tenancy and Agricultural Lands Act would have no relevance. However, this is a matter of examination of records and should be left to the parties to do the same at the first instance. Additionally, some of the averments and documents have come on record before the Court for the first time and the Dy. Secretary may not have the opportunity to examine the same. Considering all these aspects of the matter, I find it appropriate to remand the proceedings to the Dy. Secretary for fresh consideration in accordance with law after examining the records pertaining to the land in question and bearing in mind the observations made herein above.

6. It will be open for the petitioner to place additional material before the Dy. Secretary which will be taken into account and the issue be decided in accordance with the rules, regulations and prevailing policy of the Government.

7. With the above directions, the petition is disposed of. Rule is made absolute. No order as to costs.

8. Direct Service permitted.

(Akil Kureshi, J.)

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